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GENERAL MANAGER

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Comments on Lease Financing NPRM

Docket Management Facility (USCG-2003-14472/MARAD-2003-15171
U.S. Department of Transportation, Room PL-401
400 Seventh Street, S.W.
Washington, DC 20590-0001

Gentlemen:

We wish to comment on the Notice of Proposed Rulemaking regarding lease financing of Jones Act vessels. Westar Marine Services owns and operates 18 tugboats, 10 crew boats, and 12 barges, all of which are Jones Act vessels. We employ approximately 125 employees, and have over \$16 million invested in our Jones Act vessels.

This lease financing rulemaking is critical to the integrity of the Jones Act. Westar believes that the Jones Act brings many economic and environmental benefits to our nation, and is also vital to our national security. The Jones Act is the cornerstone of Westar's investment in our vessels.

We support the detailed comments submitted by the American Waterways Operators and the Maritime Cabotage Task Force. The following three items must be implemented to close the loophole:

1. Adopt Alternative 2 prohibiting charter-back arrangements in which a lease-financed vessel is chartered back to the vessel owner or member of the owner's group of companies, except when the vessel is engaged in carrying proprietary cargo for the owner or a member of the owner's group. Unless this is accomplished, foreign vessel owners will still be able to control vessels used in the domestic trade, despite the clearly expressed intent of Congress to prevent it. MarAd should review charter-back arrangements for the carriage of proprietary cargo to ensure that implementation of the proprietary cargo exception is properly administered.

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2. Establish a three-year limit on the grandfather provisions contained in the lease financing final rule (which provided an open-ended grandfather for vessels previously documented under the lease financing provision). Three years is ample time for a vessel owner to restructure its investment to ensure compliance with the regulations.
3. Ensure that the Coast Guard has access to the expertise it needs to evaluate whether an application for documentation meets the standards of the regulations. The Coast Guard should establish a procedure in which applications that meet certain defined criteria are subject to public notice and comment. This process should be triggered if the applicant is affiliated with a non-citizen vessel owner or operator, or if the lease-financed vessel will be subject to a charter-back arrangement. In addition, the Coast Guard should be free to contract with third-party auditors as needed to assist in its review of applications for documentation.

These comments emphasize the importance of promulgating a lease financing rule that is consistent with the intent of Congress: to facilitate lease financing of Jones Act vessels without allowing foreign-flag vessel operators to enter into the U.S. domestic trade.

We thank the Coast Guard and MarAd for the opportunity to comment on this proposed rule. This rule needs to be corrected quickly to ensure the future of Westar Marine Services.

Yours truly,

